



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**KENYON & KENYON LLP
ONE BROADWAY
NEW YORK NY 10004**

MAILED

APR 17 2009

OFFICE OF PETITIONS

In re Application of	:	
Joerg Schwenk	:	
Application No. 09/807,181	:	DECISION ON PETITION
Filed: June 15, 2001	:	
Attorney Docket No. 2345/152	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 5, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). No extensions of time under the provisions of 37 CFR 1.136(b) were obtained. As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed August 22, 2006, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on October 23, 2006. See MPEP 1215.04. A Notice of Abandonment was mailed April 2, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$790.00 (previously submitted on April 2, 2007), and the submission required by 37 CFR 1.114; (2) the petition fee of \$1,500.00; and (3) a proper statement of unintentional delay.

Petitioner wishes to receive a refund of the petition fee as she believes the abandonment was a result of USPTO error. 35 U.S.C. 41(a)(7) provides that a petition for the revival of an unintentionally abandoned application must be accompanied by the petition fee set forth in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived. The instant application was not improperly abandoned and therefore does not qualify for withdrawal of the holding of abandonment without payment of the petition fee.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 2135 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted on April 2, 2007 in accordance with 37 CFR 1.114.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions